

EXHIBIT No. 2



Transportation
Security
Administration

**Final Order on Request for Conditional Disclosure of SSI
in Documents Responsive to Discovery in *Ware v. Hayakawa*, Civ. No. 04-00671 (D. Haw.)**

I. Request for Conditional Disclosure of Sensitive Security Information ("SSI")

In connection with *Ware v. Hayakawa*, Civ. No. 04-00671 (D. Haw.), Plaintiff Ware (hereinafter "Plaintiff Requester") requests access to SSI contained in documents that are responsive to discovery requests served in the litigation.

II. Standard for Determination

Whether the disclosure of the requested SSI, subject to the proposed conditions, "would not be detrimental to transportation security." 49 C.F.R. § 1520.15(e).

III. Statutory and Regulatory Background

In furtherance of a congressional mandate to "prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out [civil aviation] security . . . if the [TSA Administrator] decides that disclosing the information would . . . be detrimental to the security of transportation," see 49 U.S.C. § 114(s)(1)©, TSA regulations prescribe the maintenance, safeguarding, and disclosure of SSI. See 49 C.F.R. Part 1520. SSI, by definition, is "information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA has determined would . . . be detrimental to the security of transportation." 49 C.F.R. § 1520.5(a)(3).

Access to SSI is strictly limited to those persons with a need to know, as defined in 49 C.F.R. § 1520.11, and to those persons to whom TSA authorizes disclosure under 49 C.F.R. § 1520.15. In general, a person has a need to know specific SSI when he or she requires access to the information: (1) to carry out transportation security activities that are government-approved, -accepted, -funded, -recommended, or -directed, including for purposes of training on, and supervision of, such activities; (2) to provide legal or technical advice to airport operators, air carriers or their employees regarding security-related requirements; or (3) to represent airport operators, air carriers or their employees in judicial or administrative proceedings regarding security-related requirements. 49 C.F.R. § 1520.11(a). Members of the public, including civil litigants, do not have a regulatory need to know, unless they fall into the categories noted above. 49 C.F.R. §§ 1520.11, 1520.15(a).

TSA may authorize a conditional disclosure of specific SSI to a person who does not otherwise have a regulatory need to know "upon written determination by TSA that disclosure of such records or information . . . would not be detrimental to transportation security." 49 C.F.R. § 1520.15(e). TSA also grants access to prescribed groups of persons without a regulatory need to know, including members of Congress and persons who require access to specific SSI in order to respond to enforcement actions brought by the agency. 49 C.F.R. § 1520.15(c), (d).

IV. Analysis

Since its inception in the wake of the devastating attacks of September 11, 2001, TSA has placed stringent protections on SSI, as the agency has determined that it is in the best interests of the public to restrict, to the greatest extent possible, the dissemination of any information that could be used to thwart security countermeasures by those intent upon committing criminal acts against civil aviation. Since September 11, 2001, it has been the consistent policy of TSA that the present and continuing threat of terrorist attacks against aviation interests requires that the number of persons having access to SSI be significantly and continually decreased, rather than increased. TSA initially reached this conclusion in significant part because intelligence reports indicated that al-Qa'ida operatives have, through media sources and other publicly available research, obtained access to information concerning existing security vulnerabilities at American airports.

Current intelligence information indicates that the terrorist threat against civil transportation targets continues to be a grave and ongoing concern. Reports indicate that al-Qa'ida and other terrorist operatives continue to develop plans for catastrophic attacks against targets in the United States and against United States' interests overseas. Intelligence information demonstrates that terrorists actively seek to discover security methods and vulnerabilities they can exploit in planning future attacks against civil aviation.

This intelligence information is supported by the recent audiotape warnings issued by Usama Bin Ladin and Ayman Al-Zawahiri in January and March 2006, the deadly attacks carried out on the London subway and bus lines in July 2005, the Madrid subway bombings in March 2004, and the very real possibility of future (as yet undiscovered) plans for attacks on the United States.

TSA must assess the security risks inherent in granting the requested conditional disclosure by also considering the risk of granting all similar requests in all civil litigation involving SSI. SSI is at issue in dozens of civil lawsuits at any given time, including in lawsuits alleging discriminatory application of security requirements, employment actions, patent infringement, and personal injury. In each of these lawsuits, there is at least one attorney or party who seeks access to SSI for purposes of pursuing the litigation. If access in civil litigation is provided, the number of persons with access to SSI necessarily multiplies with each new lawsuit filed, and the likelihood of inadvertent or intentional release or other misuse of SSI grows exponentially. Importantly, TSA also cannot rule out the possibility that terrorists might seek

access to SSI by filing frivolous lawsuits and pursuing discovery, or that civil litigants might disclose SSI to terrorists. The agency cannot make meaningful security distinctions between civil litigants and has been unwilling to favor certain litigants over others based on the perceived importance of any particular litigation. Accordingly, consistent with its goal to reduce significantly the number of persons with access to SSI, since September 11, 2001, TSA has denied all requests to see SSI by civil litigants and/or their attorneys who do not otherwise have a need to know, as defined in 49 C.F.R. Part 1520.

V. Determination

I deny the instant request for conditional disclosure of SSI under 49 C.F.R. § 1520.15(e), as I do not find that such disclosure "would not be detrimental to transportation security."

This Order is issued under 49 U.S.C. § 114(s) and is final. Pursuant to 49 U.S.C. § 46110, any person disclosing a substantial interest in this Order may, within 60 days of its issuance, apply for review by filing a petition for review in an appropriate U.S. Court of Appeals.

Date: 4/25/2006


Andrew Colsky
Director, SSI Office



Transportation
Security
Administration

**Final Order on Requests for Identification of Sensitive Security Information
in Documents Responsive to Discovery in *Ware v. Hayakawa*, Civ. No. 04-00671 (D. Haw.)**

**I. Requests for Identification of Sensitive Security Information (SSI)
in Submitted Documents**

In connection with *Ware v. Hayakawa*, Civ. No. 04-00671 (D. Haw.), the Transportation Security Administration ("TSA") has reviewed documents responsive to discovery requests in the above-captioned litigation in order to make a final determination as to whether they contain SSI. Attorneys for Defendant TSA (hereinafter "Defendant Submitter") forwarded to TSA's SSI Office 21 pages of documents (hereinafter "submitted documents") for review and final SSI determination, as discussed herein.

II. Delegation of Authority to Make Final SSI Determination

The authority to identify information pertaining to transportation security as SSI is delegated to the Director of the SSI Office, pursuant to a delegation order signed by then Acting Deputy Administrator, Kenneth Kasprisin, on April 29, 2005. This delegation order is in effect as of the date of this Final Order and has not been amended.

III. Review Process

Pursuant to 49 U.S.C. § 114(s) and 49 C.F.R. Part 1520, TSA's security experts carefully reviewed each page of the submitted documents for the purpose of identifying SSI therein and redacting the documents to delete SSI where possible. To minimize the impact on the litigation, TSA's review withheld the minimum SSI material necessary to protect transportation security.

To that end, agency security and SSI experts performed multiple reviews of each document. Each page was subjected to a line-by-line review for SSI, which review included consultation with subject-matter experts, and reference to past precedents and open-source (media and other public) information. For example, in order to ensure consistency in SSI decision-making, and to ensure that no sensitive security information is inadvertently released, TSA compared each document to the database it maintains of all documents that have been reviewed previously for public release. TSA also paid particular attention to identifying any older information that no longer needed to be protected, and TSA has authorized the disclosure of all such information.



TSA's SSI determinations are based on the knowledge that the disclosure of even small pieces of seemingly innocuous information could be used by terrorists to construct a mosaic that can be analyzed and synthesized to reveal existing security measures and vulnerabilities. As provided in 49 C.F.R. Part 1520, only if a security countermeasure is obsolete, in that it will not be revived and therefore reveals nothing about current or future security countermeasures, or if security intelligence is overtaken by events, will information lose its SSI protection and be released publicly.

IV. Final SSI Determination

TSA has completed its review of each document submitted by the Defendant Submitters, has identified SSI contained therein, if any, and has created redacted versions of the documents, where possible. The agency returned the submitted documents to the Defendant Submitter, together either with authorization to release the document as redacted or with instructions to withhold the document in full. The SSI Office has reviewed each submitted document, and I have determined that the withheld information is SSI, pursuant to 49 U.S.C. § 114(s) and 49 C.F.R. Part 1520.

The documents, as returned to the Defendant Submitter, are attached. As indicated on the attached pages, the redacted information constitutes SSI under 49 C.F.R. §§ 1520.5(b)(5), 1520.5(b)(8)(i), 1520.5(b)(9)(i), and 1520.5(b)(10).

V. Final Order

This Order is issued under 49 U.S.C. § 114(s) and is final. Pursuant to 49 U.S.C. § 46110, any person disclosing a substantial interest in this Order may, within 60 days of its issuance, apply for review by filing a petition for review in an appropriate U.S. Court of Appeals.

Date: 4/25/2006


Andrew Colsky
Director, SSI Office

file:///C:/Documents%20and%20Settings/sara.hicks/Local%20Settings/Temp/EEO-Ware-03-Patdown-Retest%2001-09-06.html

0	Employee	ware, raymond
0	Score	12
0	Date	Nov 7 2003 12:00AM
0	Retest	Yes
0	Pass	No
1	Informs person and asks to divest; (offers private screening)	Meets Standard
2	Asks person to remove outer articles, belt, and shoes	Meets Standard
3	Tells person to take stance with arms stretched outward (slightly forward)	Meets Standard
4	Position person facing his/her property	Meets Standard
5	Check head, collar, shoulder	Meets Standard
6	Screens [REDACTED] using correct procedures; completes	Meets Standard
6a	[REDACTED]	
6b	[REDACTED]	1520.5 (b)(4)(i)
6c	[REDACTED]	
6d	[REDACTED]	
7	Screens [REDACTED] using correct procedures; completes	Meets Standard
7a	Ask to lower arms	
7b	Pat down chest (females correctly)	
7c	Pat down front [REDACTED]	
7d	Pat down front [REDACTED]	
7e	Crotch area	
7f	Leg and Foot	
8	Asks person to sit down; pats down feet	Meets Standard
9	Refers shoes to further inspection (x-ry or examination)	Meets Standard
10	Communicates to person throughout process, explaining in clear and, conci	Meets Standard
11	Communicates with person in polite and respectful manner.	Meets Standard
12	When conducting the pat-down procedures uses back of hand in sensitive ar	Meets Standard
13	Finds Prohibited Item:	No
*	Please enter any additional comments:	Does not Meet Standard
a	Does not follow SOPs	No
b	Does not have ready familiarity of procedures	No
c	Too assertive when dealing with passenger	No
d	Too passive when dealing with passenger	No
e	Applies too much physical force with passengerr	No
f	Applies too little physical force with passenger	No
*	Please enter any additional comments:	Does not Meet Standard
g	Takes too much time performing function	No
h	Rushes through function	No
i	Does not proper actions with respect to prohibitive item found	No
j	Does not effectively explain regulations to passenger when prohibitive it	No
k	Does not exercise care when dealing with passengers' property	No

file:///C:/Documents%20and%20Settings/sara.hicks/Local%20Settings/Temp/EEO-Ware-03-Patdown-Retest%2001-09-06.html2/10/2006 10:15:24 AM

file:///S:/TSASharedFolders/COS/SSI/9000_Miscellaneous_Records/9895_Ware_v_Hayakawa/EEO-Ware-03-Patdown-Test%201-09-06.htm

0	Employee	ware, raymond
0	Score	7
0	Date	Nov 6 2003 12:00AM
0	Retest	No
0	Pass	No
1	Informs person and asks to divest; (offers private screening)	Does not Meet Standard
2	Asks person to remove outer articles, belt, and shoes	Does not Meet Standard
3	Tells person to take stance with arms stretched outward (slightly forward)	Meets Standard
4	Position person facing his/her property	Meets Standard
5	Check head, collar, shoulder	Does not Meet Standard
6	Screens [REDACTED] using correct procedures; completes	Does not Meet Standard
6a	[REDACTED]	Yes
6b	[REDACTED]	No
6c	[REDACTED]	Yes 15205(b)(9)(i)
6d	[REDACTED]	No
7	Screens [REDACTED] using correct procedures; completes	Does not Meet Standard
7a	Ask to lower arms	No
7b	Pat down chest (females correctly)	No
7c	Pat down front [REDACTED]	No
7d	Pat down front [REDACTED]	No
7e	Crotch area	Yes
7f	Leg and Foot	Yes
8	Asks person to sit down; pats down feet	Meets Standard
9	Refers shoes to further inspection (x-ry or examination)	Meets Standard
10	Communicates to person throughout process, explaining in clear and, conci	Meets Standard
11	Communicates with person in polite and respectful manner.	Meets Standard
12	When conducting the pat-down procedures uses back of hand in sensitive ar	Meets Standard
13	Finds Prohibited Item:	Yes
*	Please enter any additional comments:	Does not Meet Standard
a	Does not follow SOPs	Yes
b	Does not have ready familiarity of procedures	Yes
c	Too assertive when dealing with passenger	No
d	Too passive when dealing with passenger	No
e	Applies too much physical force with passengerr	No
f	Applies too little physical force with passenger	No
*	Please enter any additional comments:	Does not Meet Standard
g	Takes too much time performing function	No
h	Rushes through function	No
i	Does not proper actions with respect to prohibitive item found	No
j	Does not effectively explain regulations to passenger when prohibitive it	No
k	Does not exercise care when dealing with passengers' property	No

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file:///S:/TSASharedFolders/COS/SSI/9000_miscellaneous_Records/9895_Ware_v_Hayakawa/EEO-Ware-03-ETD-%2001-09-06.htm

0	Employee	ware, raymond
0	Score	11
0	Date	Nov 7 2003 12:00AM
0	Retest	Yes
0	Pass	No
1		Meets Standard
2		Meets Standard
3		Does not Meet Standard
4		Meets Standard
5		Meets Standard
6		Meets Standard
7		Does not Meet Standard
8		Meets Standard
9	Electronic Items: Uses correct sampling procedures	Meets Standard
9a		1500.5(b)(4)(i)
9b		
9c		
10	Inspects items for signs	Meets Standard
11	Communicates to person throughout process, explaining in clear and concis	Does not Meet Standard
12	Communicates with person in polite and respectful manner	Meets Standard
13	Thanks and offers passenger opportunity to repack bag/item	Meets Standard
14	Demonstrates correct bag control procedures	Meets Standard
*	Please enter any additional comments:	Does not Meet Standard
a	Does not follow SOPs	Yes
b	Does not have ready familiarity of procedures	No
c	Too assertive when dealing with passenger	No
d	Too passive when dealing with passenger	No
e	Applies too much physical force with passengerr	No
f	Applies too little physical force with passenger	No
*	Please enter any additional comments:	Does not Meet Standard
g	Takes too much time performing function	No
h	Rushes through function	No
i	Does not proper actions with respect to prohibitive item found	No
j	Does not effectively explain regulations to passenger when prohibitive it	No
k	Does not exercise care when dealing with passengers' property	No

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0	Employee	ware, raymond
0	Score	9
0	Date	Nov 6 2003 12:00AM
0	Retest	No
0	Pass	No
1		Meets Standard
2		Meets Standard
3		Meets Standard
4		Does not Meet Standard
5		Meets Standard
6		Does not Meet Standard
7		Does not Meet Standard
8		
9	Electronic Items: Uses correct sampling procedures	Does not Meet Standard
9a		No 1520.5(h)(4)
9b		No
9c		Yes
10	Inspects items for signs	Meets Standard
11	Communicates to person throughout process, explaining in clear and concis	Meets Standard
12	Communicates with person in polite and respectful manner	Meets Standard
13	Thanks and offers passenger opportunity to repack bag/item	Meets Standard
14	Demonstrates correct bag control procedures	Meets Standard
*	Please enter any additional comments:	Does not Meet Standard
a	Does not follow SOPs	Yes
b	Does not have ready familiarity of procedures	No
c	Too assertive when dealing with passenger	No
d	Too passive when dealing with passenger	No
e	Applies too much physical force with passenger	No
f	Applies too little physical force with passenger	No
*	Please enter any additional comments:	Does not Meet Standard
g	Takes too much time performing function	No
h	Rushes through function	No
i	Does not proper actions with respect to prohibitive item found	No
j	Does not effectively explain regulations to passenger when prohibitive it	No
k	Does not exercise care when dealing with passengers' property	No

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0	Employee	ware, raymond
0	Score	11
0	Date	Nov 6 2003 12:00AM
0	Retest	No
0	Pass	No
1	Informs person of HHMD search	Meets Standard
2	Asks person to divest metallic items	Meets Standard
3	Asks person if there is anything on his/her person that may cause the HHM	Does not Meet Standard
4	Tests the HHMD before screening person	Meets Standard
5	Positions person facing his/her property	Meets Standard
6	Asks person to be seated	Does not Meet Standard
7	Hand wands footwear and removes if alarms	Does not Meet Standard
8	Hand wands feet without shoes	Does not Meet Standard
9	Asks person to stand with feet shoulder-width apart; arms outstretched	Meets Standard
10	Starts	Meets Standard
11	Uses correct HW	Does not Meet Standard
12	Hand wands between	Meets Standard
13	Wands using correct procedures; completes	Does not Meet Standard
13b		No
13c		No
13d		No - 1520.5(b)(4)(i)
13e		No
13f		No
13g		Yes
13h		No
14	Wands correct procedures; completes	Does not Meet Standard
14b		No
14c		No
14d		No
14e		No
14f	Leg to the foot	Yes
14g		No
15	Informs and asks person to divest	Does not Meet Standard
16	Re-wands alarmed area ,if items are divested	
17	Informs and conducts pat-down	
18	On alarm, ask to	
19		Meets Standard
20	Re-wand area	Meets Standard
21	On alarm, ask for	Does not Meet Standard
22	Correctly and completely performs step forward method	Does not Meet Standard
22a	Screens front: asks person to step forward	No
22b	HW	Yes

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22c	Repeat with opposite leg: HW	Yes
22d	Screens back: Ask the person to step forward	No
22e	HW	No
22f	Repeat with opposite leg. Ask the person to return to the original stance	No
23	Communicates to person throughout process, explaining in clear and concise	Meets Standard
24	Communicates with person in polite and respectful manner	Meets Standard
25	When conducting the pat-down procedures uses back of hand in sens	Does not Meet Standard
26	Finds prohibitive item:	N/A
	* Please enter any additional comments:	Does not Meet Standard
a	Does not follow SOPs	Yes
b	Does not have ready familiarity of procedures	No (S20.5/b)(9/1/)
c	Too assertive when dealing with passenger	No
d	Too passive when dealing with passenger	No
e	Applies too much physical force with passenger	No
f	Applies too little physical force with passenger	No
	* Please enter any additional comments:	
g	Takes too much time performing function	No
h	Rushes through function	No
i	Does not proper actions with respect to prohibitive item found	No
j	Does not effectively explain regulations to passenger when prohibitive it	No
k	Does not exercise care when dealing with passengers' property	No

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0	Employee	ware, raymond
0	Score	22
0	Date	Nov 7 2003 12:00AM
0	Retest	Yes
0	Pass	No
1	Informs person of HHMD search	Meets Standard
2	Asks person to divest metallic items	Meets Standard
3	Asks person if there is anything on his/her person that may cause the HH	Does not Meet Standard
4	Tests the HHMD before screening person	Meets Standard
5	Positions person facing his/her property §1520.5(b)(4)(i)	Meets Standard
6	Asks person to be seated	Meets Standard
7	Hand wands footwear and removes if alarms	Meets Standard
8	Hand wands feet without shoes	Does not Meet Standard
9	Asks person to stand with feet shoulder-width apart; arms outstretched	Meets Standard
10	Starts	Meets Standard
11	Uses correct HW	Meets Standard
12	Hand wands between	Meets Standard
13	Wands using correct procedures; completes	Meets Standard
13b		
13c		
13d		
13e		1520.5(b)(4)(i)
13f		
13g		
13h		
14	Wands correct procedures; completes	Meets Standard
14b		
14c		
14d		
14e		
14f	Leg to the foot	
14g		
15	Informs and asks person to divest	Yes
16	Re-wands alarmed area if items are divested	Meets Standard
17	Inform and conduct pat-down	Meets Standard
18	On alarm, ask to	Meets Standard
19		Meets Standard
20	Re-wand area	Meets Standard
21	On alarm, ask for	Meets Standard
22	Correctly and completely performs step forward method	N/A
22a	Screens front: asks person to step forward	
22b	HW	

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22c	Repeat with opposite leg: HW	
22d	Screens back: Ask the person to step forward	
22e	HW	
22f	Repeat with opposite leg. Ask the person to return to the original stance	(5.20.5/6/9/1)
23	Communicated to person throughout process, explaining in clear and concis	Meets Standard
24	Communicates with person in polite and respectful manner	Meets Standard
25	When conducting the pat-down procedures uses back of hand in sens	Meets Standard
26	Finds prohibitive item:	No
*	Please enter any additional comments:	Does not Meet Standard
a	Does not follow SOPs	No
b	Does not have ready familiarity of procedures	No
c	Too assertive when dealing with passenger	No
d	Too passive when dealing with passenger	No
e	Applies too much physical force with passengerr	No
f	Applies too little physical force with passenger	No
*	Please enter any additional comments:	
g	Takes too much time performing function	No
h	Rushes through function	No
i	Does not proper actions with respect to prohibitive item found	No
j	Does not effectively explain regulations to passenger when prohibitive it	No
k	Does not exercise care when dealing with passengers' property	No

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0	Employee	ware, raymond
0	Score	17
0	Date	Nov 6 2003 12:00AM
0	Retest	No
0	Pass	No
1	Informs person of HHMD search	Meets Standard
2	Asks person to divest metallic items	Does not Meet Standard
3	Asks person if there is anything on his/her person that may cause the HH	Does not Meet Standard
4	Tests the HHMD before screening person	Does not Meet Standard
5	Positions person facing his/her property	Meets Standard
6	Asks person to be seated §1520.5(b)(4)(i)	Does not Meet Standard
7	Hand wands footwear and removes if alarms	Does not Meet Standard
8	Hand wands feet without shoes	Does not Meet Standard
9	Asks person to stand with feet shoulder-width apart; arms outstretched	Meets Standard
10	Starts	Meets Standard
11	Uses correct HW	Meets Standard
12	Hand wands between	Meets Standard
13	Wands using correct procedures; completes	Meets Standard
13b		
13c		
13d		
13e		
13f		
13g		
13h		
14	Wands correct procedures; completes	Meets Standard
14b		
14c		
14d		
14e		
14f	Leg to the foot	
14g		
15	Informs and asks person to divest	Yes
16	Re-wands alarmed area, if items are divested	Meets Standard
17	Inform and conduct pat-down	Meets Standard
18	On alarm, ask to	Meets Standard
19		Does not Meet Standard
20	Re-wand area	Meets Standard
21	On alarm, ask for	Meets Standard
22	Correctly and completely performs step forward method	N/A
22a	Screens front: asks person to step forward	
22b	HW	

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22c	Repeat with opposite leg: HW	1520.5/6/9/11
22d	Screens back: Ask the person to step forward	
22e	HW	
22f	Repeat with opposite leg. Ask the person to return to the original stance	
23	Communicated to person throughout process, explaining in clear and concise	Meets Standard
24	Communicates with person in polite and respectful manner	Meets Standard
25	When conducting the pat-down procedures uses back of hand in sens	Meets Standard
26	Finds prohibitive item:	Yes
*	Please enter any additional comments:	Does not Meet Standard
a	Does not follow SOPs	Yes
b	Does not have ready familiarity of procedures	Yes
c	Too assertive when dealing with passenger	No
d	Too passive when dealing with passenger	No
e	Applies too much physical force with passenger	No
f	Applies too little physical force with passenger	No
*	Please enter any additional comments:	
g	Takes too much time performing function	No
h	Rushes through function	No
i	Does not proper actions with respect to prohibitive item found	No
j	Does not effectively explain regulations to passenger when prohibitive it	No
k	Does not exercise care when dealing with passengers' property	No

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